

Before the
Commission on Common Ownership Communities
for Montgomery County, Maryland

In the Matter of	:	
Sandi L. Burns	:	
Complainant	:	
	:	
vs.	:	Case No. 330-O
	:	
North Creek Condominium	:	
Association	:	
	:	
Respondent	:	
	:	

DECISION AND ORDER

The above-entitled case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, pursuant to Sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1994, as amended, and the Commission having considered the testimony and evidence of record, it is therefore, this 15th day of October, 1996, found, determined and ordered as follows:

On January 11, 1996, Sandi L. Burns, owner of 13009 Trailside Way, Germantown, MD, hereinafter the Complainant, filed a formal dispute with the Office of Common Ownership Communities. The Complainant alleged that the North Creek Condominium Board of Directors (hereinafter the Respondent), refused to pay a \$1,000.00 insurance deductible payment which would allow her to pay for repairs to her condominium unit that occurred on September 18, 1995 resulting from damage caused by sudden rapid water escape from a faulty plumbing connection within her unit. The Complainant's unit sustained property damages of \$6,148.66 and the Respondent received and remitted the sum of \$5,148.66 from its insurance carrier. The Complainant alleged that it was the responsibility of the Respondent and Board to cover the cost of the deductible in the amount of \$1,000.00.

The Respondent and Board contends that the Declaration and Bylaws of the Condominium provide for an overall scheme of allocation of expenses related to damages and that the Complainant and/or the Complainant's own individual insurance carrier is responsible for the deductible amount of \$1,000.00

The Complainant sought an Order requiring the Respondent Board to reimburse her for the \$1,000.00 deductible expense that she incurred for the repair of her unit.

Inasmuch as the matter was not resolved through mediation this dispute was presented to the Commission on Common Ownership Communities for action pursuant to Section 10B-11(e). On August 28, 1996, the Commission conducted a public hearing in this cause.

FINDINGS OF FACT

Based on the stipulations of the parties and the testimony and evidence of record, the Commission makes the following findings:

1. The Complainant is the owner of the condominium unit at 12009 Trailside Way, Germantown, MD, a unit within the North Creek Condominium.
2. On or about September 18, 1995, a plumbing connection failed within that unit causing damages in the stipulated amount of \$6,148.66.
3. The Master Condominium Insurance Policy maintained by Respondent paid for all damages in excess of a \$1,000.00 deductible, namely the amount of \$5,148.66.
4. The parties have stipulated that the damage that occurred is in the nature of the types of damage and perils normally covered by the insurance policies maintained by both the Respondent and the Complainant.
5. The Complainant made demand upon Respondent for the reimbursement of the \$1,000.00 deductible.¹ The Respondent refused to reimburse the Complainant in that amount.
6. The North Creek Condominium was established by Declaration dated April 17, 1978 and, as such, predates the enactment of the Maryland Condominium Act.

¹The evidence also shows that Complainant made demand upon her own insurance carrier, Erie Insurance, to cover the deductible amount of \$1,000.00 less her own deductible of \$200.00.

CONCLUSIONS OF LAW

Accordingly, the Commission concludes, based upon a preponderance of the evidence and after a full and fair consideration of the evidence of record, that:

1. Pursuant to §11-114(a) of the Real Property Article of the Annotated Code of Maryland, it is the duty of the Council of Unit Owners to maintain, to the extent reasonably available, property insurance on the common elements and units, exclusive of improvements and betterments installed in units by unit owners, insuring against those risks of direct physical loss commonly insured against, in amounts determined by the Council of Unit Owners but not less than any amount specified in the Declaration or Bylaws. Further, pursuant to §11-114(g)(2) "(t)he cost of repair or replacement in excess of insurance proceeds and reserves is a common expense."

2. However, §11-142 of the Real Property Article details the applicability of the Maryland Condominium Act to condominiums (such as North Creek Condominium) that were established before July 1, 1982. In particular, §11-142(d) provides that "except to the extent that the declaration or master deed, bylaws or plat provide otherwise, Sections 11-114 and 11-123 of this title are applicable to all condominiums." As such, if the Declaration and Bylaws provide a different scheme with regard to insurance coverage, the scheme encompassed in those documents will control rather than the provisions detailed above in §11-114.

3. In fact, the North Creek Condominium Bylaws do detail a scheme of insurance and allocation of risk of loss between the Council of Unit Owners and the owner of an individual unit. Article X, Section 1 of the Bylaws allocates the cost of repair, and restoration. In particular, Subsection (e) reads as follows:

Section 1. Management and Common Expenses. The Council of Unit Owners, acting by and through its Board of Directors, shall manage, operate and maintain the condominium and, for the benefit of the condominium units and the unit owners, shall enforce the provisions hereof and shall pay out of the common expense fund hereinelsewhere provided for the cost of managing, operating, and maintaining the condominium, including, without limitation, the following:

* * *

(e) the cost of repairs, maintenance, service and replacement of the common elements of the condominium, including, without limitation, the cost of painting, maintaining, replacing, repairing and landscaping the

common elements and such furnishings and equipment for the common elements and the Board of Directors shall determine are necessary and proper; provided, however, that nothing herein contained shall require the Council of Unit Owners to repair, replace, or otherwise maintain the interior of any condominium unit or any fixtures, appliances, equipment or the like located therein, nor shall the Council of Unit Owners be required to repair, replace or maintain garage doors

4. Subsection (g) of Article X provides further that, while the Council of Unit Owners has the right to make certain repairs to individual units under certain circumstances, the Council of Unit Owners is then required to assess the costs of those repairs against that condominium unit and those costs are then to be paid by the owner of such unit.

5. Inasmuch as §11-142 allows the Bylaws of a condominium that predated July 1, 1982 to impose a different insurance scheme than that detailed in §11-114, the insurance scheme laid out in the Bylaws control.

ORDER

In view of the foregoing, and based on the evidence of record, the Commission orders that:

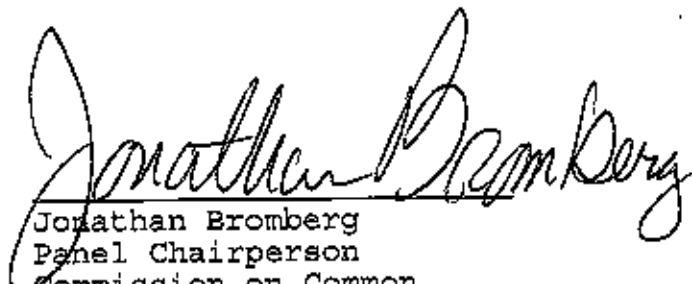
1. The Respondent need not reimburse the Complainant in the amount of \$1,000.00 of the deductible of insurance that was not paid to Complainant for the losses she sustained.

2. In accordance with the Bylaws of North Creek Condominium, the expenses of the deductible were properly assessed against the Complainant.²

3. The foregoing was concurred in by panel members Auvil, Blumberg, and Bromberg.

²The panel wishes to note that while the Commission has no jurisdiction over Erie Insurance Co., a representative of Erie Insurance along with Erie's counsel were present at the hearing. The Commission is concerned that, in the face of the Bylaws and documents provided to Erie, it did not promptly pay to the Complainant the amount of \$800.00, namely, the \$1,000.00 condominium master policy deductible less the \$200.00 deductible that Complainant had with her own individual policy.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days from the date of this Order, pursuant to Chapter 1100, Subtitle B, Maryland Rules of Procedure.


Jonathan Bromberg
Panel Chairperson
Commission on Common
Ownership Communities